# Tax Standard

## Brief description

The purpose of this Standard is to set out the approach and outline the framework by which GPC's tax obligations are met from an operational and risk management perspective.

This Standard broadly sets out the requirements for tax corporate governance and is to operate in conjunction with any other documented or operational policies and procedures that operate within GPC with respect to tax risk management and governance.

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| Owner | Board |
| Custodian | Chief Financial Officer |

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|---|---|
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If you require any further information, please contact the Custodian.

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The current version of this Standard is available on GPC's Intranet.

# Contents

# 1 Terms and definitions

In this Standard:

"**ARC**" means Audit and Risk Committee

**"ATO"** means Australian Taxation Office.

**"BEPS"** means Base Erosion and Profit Shifting.

**"ESS Reporting"** means Employee Share Scheme Reporting.

**"Gladstone Ports Corporation"** or "**GPC**" means Gladstone Ports Corporation Limited and all subsidiary entities.

**"Guides"** means the ATO's Tax Risk Management and Governance Review Guide [1] and the ATO's GST Governance, Data Testing, and Transaction Testing Guide[2].

**"MLTN"** means More Likely Than Not.

**"NTER"** means National Tax Equivalent Regime.

**"RAP"** means Reasonably Arguable Position.

**"RTP"** means Reportable Tax Position.

Terms that are capitalised and not otherwise defined in this Standard are defined in the GPC Corporate Glossary Instruction (as listed in Appendix 1 – Related documents).

# 2 Introduction

The overall approach of GPC to taxation is ultimately determined by the risk tolerance established by the Board (or its delegated subcommittee). The Board has formally delegated responsibility for the oversight of tax risk and this Standard to the ARC.

Tax risk management forms a part of GPC's Financial and Commercial Policy.

GPC is committed to managing its tax obligations within the context of its commercial operations and with full regard to all relevant legislation and regulation, whilst:

(a) maintaining the best interests of Gladstone Ports Corporation;

(b) maximising opportunities where possible; and

(c) balancing the costs and non-monetary downsides that such a policy can entail.

A proactive rather than reactive approach is required.

This Standard has been drafted in line with the tax corporate governance "better practices" for corporate taxpayers set by the ATO in their Guides.

## 2.1 Purpose

The ATO have adopted an assurance-based approach to not only reviewing taxpayers' affairs but also to identifying non-compliant taxpayers. Part of that assurance-based approach

[1] https://www.ato.gov.au/Business/Large-business/In-detail/Key-products-and-resources/Tax-risk-management-and-governance-review-guide/
[2] https://www.ato.gov.au/law/view/document?docid=JTR/GST-Governance

involves regulators examining and forming a view of the level of corporate governance and risk management dealing with tax.

Ongoing tax developments, coupled with the ATO's requirement that companies have robust tax corporate governance in place, demonstrate the importance for companies to have sound tax risk management practices operating in their business.

Although company directors are not expected to be tax specialists, "there is a core, irreducible requirement of directors to be involved in the management of the company and to take all reasonable steps to be in a position to guide and monitor"[3]. The establishment of this Standard is one of the steps taken by the Board to monitor tax risks of GPC and guide management in the evaluation and resolution of those risks.

### 2.2 Scope

This Standard applies to GPC, as head entity of the NTER tax consolidated group and its subsidiaries. This includes the Board, the ARC and all GPC Employees with roles that potentially impact tax, and employees of support functions.

### 2.3 Objectives

This Standard reflects GPC's minimum requirements in ensuring direct and indirect tax risks are identified, managed, assessed, monitored and reported in a transparent and accountable manner to ensure GPC and all its Employees:

(a) comply with the obligations under the GOC Act, the Corporations Act and other policies applicable to GOCs; and

(b) align with initiatives and best practice as articulated by the ATO when dealing with tax.

## 3 Principles and requirements

### 3.1 Overall approach to taxation and the regulator

GPC pursues an approach to tax that is principled, transparent and sustainable in the long term. The Board endorses the following principles governing its approach:

a) Commitment to ensure full compliance with all statutory obligations, and full disclosure to revenue authorities.

b) Maintenance of documented policies and procedures in relation to tax risk management and completion of thorough risk assessments including escalation and reporting to the Board where prescribed.

c) Sustaining engagement with revenue authorities, and actively considering the implications of tax planning for GPC's wider reputation

d) Management of tax affairs in a pro-active manner that seeks to maximise shareholder value, while operating in accordance with the law.

### 3.2 Tax risk

Tax risk can be defined as follows:

[3] *Australian Securities and Investments Commission v Healey* [2011] FCA 717 (the "Centro" case)

*The risk that GPC is paying the incorrect amount of tax and/or that the tax positions adopted by GPC are not consistent with their published tax risk appetite.*

Tax risk is like any other risk faced by GPC in that it should be identified, controlled and reported upon.

## 3.3 Tax risk management

### (a) Tax risk tolerance

GPC's philosophy on tax risk management is to balance the prevention of unnecessary disputes with tax authorities, that may give rise to reputational risk, and to preserve investor value.

Tax risk, particularly the reputational component, extends beyond GPC’s relationship with revenue authorities and impacts almost every area of GPC, including shareholders, investors, staff, management, the Board, the ARC and all other stakeholders. Risk to GPC as head entity, and its subsidiaries can cause a significant negative impact to GPC and the subsidiaries’ reputation or finances. Tax risk and its impact on stakeholders must also be managed by the Board in meeting its fiduciary duties to shareholders.

GPC will tolerate a low level of risk (which is inherent in taxation matters). Notwithstanding, taxes will be managed with the objective that all tax liabilities properly due under the law are correctly recorded, accounted for and paid.

### (b) Assessment of tax risk

The Board requires an assessment of tax risk and a rating for all identified risks. In determining the appropriate classification, regard should be had as to how the revenue authorities profile Government owned corporations (e.g., past compliance behaviour, risks arising out of new tax laws).

Reports are required to be prepared and presented to the Board in accordance with Section 4.1 of this Standard.

### (c) Certainty of tax positions

In view of 3.3(b) above, GPC will balance considered tax planning with appropriate tax risk management by adopting valid and supportable positions and maintaining awareness of other prevailing views and risks. The ATO has acknowledged that “tax planning is legitimate when you do it within the letter and spirit of the law[4].” However, GPC should not engage in tax planning that goes beyond support for genuine commercial activities.

The level of certainty required for tax positions taken will vary depending on the nature and size of the underlying issue. However, no tax position is to be taken unless it is at least a RAP, and thus should meet the threshold penalty protection of a RAP[5]. The maintenance of this position, including evidence in support of the position, should be considered to be a significant protection against tax shortfall penalties.

[4] https://www.ato.gov.au/General/Tax-planning

[5] A Reasonably Arguable Position (**“RAP”**) is a term used in the tax law and refers to whether a tax position taken is “reasonably arguable”. If a taxpayer can evidence they do have a RAP, there are associated protections against penalties should the position taken ultimately be determined to be not correct. A position is defined as being reasonably arguable (in section 284-15 of the *Taxation Administration Act 1953*) if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect.

This position should be monitored in accordance with other disclosure requirements so as to manage disclosure obligations. For example, a MLTN position may avoid the need for Category A[6] disclosure in the ATO RTP schedule[7].

**(d) Significant transactions and events – escalation procedure**

The tax attributes of all significant transactions or events should be considered by the Finance Team. An event (such as a transaction, issue or risk) will be significant if it has the potential to markedly affect GPC's compliance, operational, financial or strategic outcomes or processes.

Tax issues associated with significant transactions or events are escalated from the Accountants to the Finance Team, who in turn escalates to the CFO for consideration and review and in turn, the ARC and / or Board if necessary.

**(e) General anti-avoidance**

GPC will not enter into any transaction where there is a material risk that any legislative general anti-avoidance provisions will be applied by a Court.

**(f) Interpretation risk and escalation process**

Where a dispute arises between the Finance Team on a tax interpretation issue that is jeopardising a transaction being undertaken, the issue should be escalated through the Finance Superintendent to the Finance Manager and then to the CFO, and subject to the significance of the transaction, to the ARC and / or Board.

**(g) Communication and relationships**

The Finance Team is responsible for managing relationships with Federal and State revenue authorities in all jurisdictions, external advisors and industry bodies as it relates to tax.

**(i) Tax regulators**

The Finance Team will have contact with various Federal and State revenue authorities from time to time. The objective of establishing and maintaining professional relationships with authorities is to enable an efficient and collaborative hearing of tax issues. Maintaining an open dialogue with the ATO has been promoted by the Commissioner of Taxation in the ATO's Guide.

**(ii) External advisors**

GPC will be required to engage external tax advisors from time to time as part of managing the desired tax risk profile. The choice of external tax advisor will generally be at the discretion of the CFO.

**(iii) Lobby groups**

The Finance Team participates in several relevant industry forums and lobbying groups to ensure it is engaged with current tax issues and developments. Generally, participation is via professional memberships of the Finance Team (e.g., National Tax and Accountants' Association, CPA etc.) or its advisors.

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[6] A Category A disclosure is a position that is about as likely to be correct as incorrect or is less likely to be correct than incorrect.
[7] The reportable tax position schedule, as defined by the ATO, is a schedule to the company income tax return that requires large businesses to disclose their most contestable and material tax positions.

**(h) Promoter penalties**

GPC will not promote tax exploitation schemes. A tax exploitation scheme includes any arrangement or transaction entered into or carried out with the sole or dominant purpose of paying less tax or receiving increased tax offsets.

## 3.4 Management of key tax processes

**(a) General requirements**

It is incumbent on the Finance Team to design, document and implement strong internal controls as well as policy and procedure manuals.

**(b) Document management**

GPC must have a Record Retention procedure designed with the applicable statute, common law rights and revenue authority practice policies in mind (including statutory record retention requirements: Legal Professional Privilege, the Accountants' Concession, and the Corporate Board Advice Concession).

Record-keeping requirements should be read in conjunction with the following documents:

(i) Records Management Standard

(ii) Archives Management Procedure

(iii) Information Policy

**(c) Operations and compliance**

GPC's Board undertakes that GPC's Internal Audit or external advisor will conduct independent periodic risk assessments of the tax corporate governance framework including those controls associated with the operational and compliance aspects of GPC's tax obligations. In this context, tax specific controls will be tested. GPC will consider the guidelines for this tax controls testing contained in the ATO's Self-Assessment Procedures and How to Test Controls, located in the Guides, and will adapt these guidelines to GPC's circumstances. Reference should be made to the *GST Governance, Data Testing and Transaction Testing Guide* when testing GST related controls.

It is expected that all key tax controls will be tested by an independent tester (i.e., an independent internal or external party that is not a tax control owner). Key controls for this purpose include:

- Adherence with the requirements of this Standard and Tax Risk Management Standard in relation to reporting to the Board.
- Identification of significant transactions and application of this Standard and Tax Risk Management Standard thereto
- Documentation of income tax and GST processes (including specific controls within those processes)
- Evidence of consideration and sign off of significant transactions by the relevant stakeholder.
- The Finance Team understanding their roles and responsibilities.

In this respect, particular regard will be paid to the following "justified trust" Board-level controls (**BLC**) and Managerial-level controls (**MLC**) identified by the ATO:

- BLC 1 – Formalised tax control framework
- BLC 3 – The board is appropriately informed
- BLC 4 – Periodic internal control testing
- MLC 1 – Roles and responsibilities are clearly understood
- MLC 3 – Significant transactions are identified
- MLC 4 – Controls are in place for data (GST only)
- MLC 6 – Documented control frameworks
- MLC 7 – Procedures to explain significant differences

At the conclusion of testing, a report is to be provided to the Board setting out the testing methodology which may include reperformance, examination / inspection and observation (including sample size), documents / information relied upon by the tester, test results and any remediation activities identified by management.

The CFO is accountable for the tax risk assessments and ensuring the appropriate controls are in place to manage the identified risks.

The Finance Team, with the oversight of the CFO, is responsible for the development and maintenance of internal controls as well as policy and procedure manuals that consider major transactions and strategies, taking into account any changes in tax law.

The Board will make an annual statement attesting that they have effective policies and processes in place to manage tax risk.

# 4 Monitoring and review

## 4.1 Tax risk reporting and monitoring

The Board bears the ultimate responsibility for tax corporate governance and tax risk management standards. To assist the fulfilment of these obligations, the Board (or its authorised subcommittee) requires the following reports to be prepared and presented:

(a) Tax Status Report – at least biannually

(b) Tax Risk Register – at least biannually

(c) Tax Risk Matrix – at least biannually

(d) Tax Representations & Assurance Report – at least annually

In addition, significant transactions and events will be brought to the attention of the Board and the ARC more frequently than as prescribed in this Standard, that is, in real time when necessary.

## 4.2 Training and awareness

The CFO is responsible for approving or delegating approval for training, for key people across the Finance Team to enable them to own and manage tax risk. This includes training for tax technical areas, tax corporate governance and updates in the tax law. It is then the responsibility of these attendees to cascade this knowledge and promote tax risk ownership across their teams. Key performance indicators should be used to promote adherence with this Standard.

### 4.3 Whistleblower provisions

In extreme circumstances an individual may be concerned that a serious breach has occurred but are in a position where he or she believes that it would be personally damaging to pursue it through normal channels. For instance, they may have come into possession of information that indicates a colleague has knowingly caused a breach or suppressed the reporting of a breach.

In such a case, the Whistleblower will make a disclosure of a breach of professional conduct (the Disclosure) to another person (the Recipient) who has the corrective power or perceived willingness to take corrective action. The Recipient will take reasonable measures to protect the Whistleblower against reprisals as a result of the Disclosure. The Disclosure will be investigated on a timely basis and appropriate corrective action taken.

This provision operates in addition to, and alongside GPC's Whistleblower Protection Procedure and Public Interest Disclosure Procedure.

### 4.4 Non-compliance with this Standard

Implementation of this Standard is the responsibility of the CFO, with the oversight of the ARC and the Board. The CFO will report non-compliance with the Standard, by exception to the ARC and the Board.

### 4.5 Review of this Standard

This Standard is to be reviewed every 2 years by the CFO who will propose any changes, if appropriate to the ARC and the Board.

## 5 Appendices

### 5.1 Appendix 1 – Related documents

#### (a) Legislation and regulation

Key relevant legislation and regulation, as amended from time to time, includes but is not limited to:

| Type | Legislation/regulation/guidelines |
|---|---|
| Federal Acts | *Corporations Act 2001* (Cth)<br><br>*Income Tax Assessment Act 1997* (Cth)<br><br>*Income Tax Assessment Act 1936* (Cth)<br><br>*Taxation Administration Act 1953* (Cth)<br><br>*Taxation Administration Act 1997* (Cth) |
| State Acts | *Government Owned Corporations Act 1993* (Qld)<br><br>*Financial Accountability Act 2009* (Qld)<br><br>*Financial and Performance Management Standard 2019* (Qld) |

(b) **Gladstone Ports Corporation documents**

The following documents relate to this Standard:

| Type | Document number and title |
|---|---|
| **Tier 1:** Policy | #1539280 Financial and Commercial Policy<br><br>#1133344 Information Policy |
| **Tier 2:** Standard/Strategy | #1552709 Tax Risk Management Standard<br><br>#1190724 Records Management Standard |
| **Tier 3:** Specification/ Procedure/Plan | #1522205 Whistleblower Protection Procedure<br><br>#941363 Public Interest Disclosure Procedure<br><br>#1193076 Archives Management Procedure |
| **Tier 4:** Instruction/Form/ Template/Checklist | #1621179 GPC Corporate Glossary Instruction |
| **Other** | N/A |

## 5.2 Appendix 2 - Enterprise-wide tax corporate governance roles and responsibilities

(a) **The Board**

The ultimate responsibility for corporate governance and therein the establishment of a tax risk management and governance framework is borne by the Board.

The Board has formally delegated responsibility for the oversight of tax risk and this Standard to the ARC.

(b) **The Audit and Risk Committee (ARC)**

The ARC was established to assist the Board in fulfilling its responsibilities in relation to its financial, internal control, commercial and investment position.

The ARC considers and actions the finance, investment and commercial issues, including tax, that are brought to the attention of the Board.

The ARC's responsibilities include the provision of advice and assistance to the Board in fulfilling the Board's responsibilities relating to internal accounting controls and procedures, and the review of the risk management framework for accounting and tax risks of Gladstone Ports Corporation.

(c) **Chief Financial Officer**

The CFO is responsible for the development and monitoring of the tax risk framework, ensuring clear risk ownership and assisting Risk Owners[8] define and

[8] In this Policy, Risk Owner is any individual within the GPC business whose role either directly involves tax or who otherwise performs a function which has taxation consequences.

manage a robust control set. The CFO must escalate transactions or tax issues that they believe should be brought to the attention of the Board and ARC.

The CFO is responsible for the development and monitoring of the entirety of GPC's tax affairs and advises staff on all matters relating to taxation. The CFO is responsible for monitoring tax issues and risks and escalating these to the Board and / or ARC as necessary.

**(d) Finance Team**

The role of the Finance Team is to establish, monitor and enforce GPC's tax corporate governance framework, planning and strategy, risk management, and compliance goals. The Finance Team is also the central point of contact for GPC's management, and the Board, on tax matters. The Finance Team serves a first line role with respect to tax matters that impact GPC's subsidiaries and their operations. The Finance Team are responsible for the ongoing management of general tax matters, which includes updating and identifying tax risks and applying suitable internal controls. The Finance Team must ensure that all control activities are adequate and that they escalate significant transactions and events and any other concerns relating to tax matters to the CFO in real time. The Finance Team is headed by the CFO.

## 5.3 Appendix 3 – Revision history

| Revision date | Revision description | Author | Endorsed by | Approved by |
|---|---|---|---|---|
| 23/04/2020 | #1552703 v1 to 3 | Charleen Riley, Finance Superintendent | Jenelle Druce, Commercial General Manager (Acting) | Board |
| 31/03/2021 | #1552703 v4 | Charleen Riley, Finance Superintendent | Jenelle Druce, Commercial General Manager (Acting) | EMT (minor changes) |
| 31/05/2023 | #1552703 v5 | Charleen Riley, Finance Manager | Jenelle Druce, Chief Financial Officer | Board (minor changes) |
| 23/08/2024 | #1552703 v6<br>Reviewed and content from Tier 1 Policy rolled into new Tier 2 Standard template | Kate Jenkin, Finance Superintendent | Charleen Riley, Chief Financial Officer (Acting) | Board |